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In The Supreme Court of the United States

MARK ANTHONY SHERFEY, SR., ET AL.,
Petitioner,

v.

MARCUS D. SHERFEY, ET AL., ON BEHALF OF TONY SHERFEY & THE COMMONWEALTH OF KENTUCKY
Respondent.

Petition For A Writ Of Certiorari To The Supreme Court of Kentucky

PETITION FOR A WRIT OF CERTIORARI
with Appendix

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November, 2002

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58 pp

QUESTIONS PRESENTED FOR REVIEW

The Monroe Circuit Court for the 29th Judicial District of the Commonwealth of Kentucky entered an Order awarding custody of the Petitioner's minor child, T.S. Sherfey, to his grandparents, the Respondents, Marcus D. Sherfey and Naomi Sherfey, without finding that the natural parents were unfit and gave the grandparents equal standing under KRS 403.270(1) which is in direct conflict with the liberty interests of the natural parents and their freedom of choice in raising their son in the religious and educational setting of which they deem appropriate.

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The Kentucky Court of Appeals, in its opinion and order, found that KRS 402.270(1) did not significantly alter the preexisting law of custody in the Commonwealth of Kentucky and therefore found that the constitutional rights of the Petitioners were not violated. This decision was affirmed by the Supreme Court of Kentucky in its denial of discretionary review of this matter. The Petitioners, Marcus Anthony Sherfey and Laurie Sherfey, respectfully pray that a ***Writ of Certiorari*** be issued to review the opinion of the Kentucky Court of Appeals entered on January 18, 2002, motion for discretionary review denied June 3, 2002 respectively.

OPINION BELOW

The Kentucky Court of Appeals entered its opinion awarding custody of the Petitioners minor child to his paternal grandparents Marcus D. Sherfey and Naomi Sherfey, the Respondents in this action. The Petitioners claim that their liberty interests and constitutional protection giving the presumption in favor of natural parents who have not been found to be unfit preference in a custody action brought by a third party against one or both of the natural parents. The Kentucky Court of Appeals affirmed the lower court's decision finding that the Respondents, the natural grandparents of the minor child T.S., had de facto parent status under a 1998 modification to KRS 403.270. A copy of said opinion is attached as Appendix B.

JURISDICTION

The jurisdiction of this Court is invoked in 28 U.S.C. § 1343. CONSTITUTIONAL PROVISIONS INVOLVED IN THE UNITED STATES CONSTITUTION AMENDMENT FOURTEEN.

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property with due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

On January 18, 2002, the Court of Appeals of the Commonwealth of Kentucky, in Action No. 2001-CA-000519-MR affirmed the opinion and order of the Monroe Circuit Court Action No. 00-CI-00093 and granted custody of the Petitioners', Mark Anthony Sherfey, Sr. and Laurie Sherfey (hereinafter "Petitioners"), minor child, T.S., to his paternal grandparents, Marcus D. Sherfey and Naomi Sherfey (hereinafter "Respondents"). The Kentucky Court of Appeals found with respect to the unconstitutionality claim of the Petitioners that KRS 403.270 did not significantly alter the preexisting law of custody determination in the state of Kentucky. The Court further noted "although a case in which the natural parents have been forced to abandon their children would be more constitutionally troubling, here Mark and Laurie voluntarily abandoned T.S. and failed for reasons other than properly providing essential care for T.S. (See Opinion of the Commonwealth of Kentucky Court of Appeals, B7)". The Court concluded, "A finding of unfitness would have been warranted in this case; therefore, it cannot be held that Mark and Laurie's constitutional rights were violated (See Opinion of the Commonwealth of Kentucky Court of Appeals, B7)."

This case arises as a result from a dispute between the parents and the grandparents over the child rearing of all of the children of the Petitioners, but more specifically the oldest, T.S. Petitioners are practicing members of the Mennonite faith while the Respondent, Marcus Sherfey, is a Baptist minister. Prior to June of 1998, the Petitioners were members of the Respondents' church but subsequently embraced the Mennonite following. Further, the Petitioners

were advocates of home schooling and in fact, all of the minor children of the Petitioners had been home schooled through June of 1998. The Respondent, Marcus Sherfey, was, at that time, the Assistant Superintendent to Schools of Monroe County, Kentucky. In late June of 1998, after an argument and physical confrontation between the minor child and the Petitioner, Mark A. Sherfey, the minor child entered the home of the Respondents. Evidence introduced at trial indicated that Petitioners were moving the residence from Kentucky to Tennessee to a Mennonite community and had concerns that the grandparents would seek to prevent all of their children from leaving the state. In early August, the Respondents sought to have the minor child, T.S., enrolled in public school, and literally chased the Petitioners out of the state in attempting to secure their signature.

Respondents filed juvenile petitions in the Monroe District Court alleging physical and emotional abuse against the Petitioners on behalf of T.S. and his next eldest sibling, T.A.S. The Petition, with respect to T.A.S., was dismissed with lack of jurisdiction but the petition on behalf of T.S. went forward and was, by agreement, ultimately dismissed in October of 1998. By agreement between the Petitioners and Respondents, T.S. remained in the home of the Respondent until such time as Petitioners could transition T.S. into a camp setting that would provide disciplinary focus. On June 18, 1999, less than one year from the date T.S. moved into the home of the Respondents, Petitioners came from Monterey, Tennessee to Kentucky with a team of professionals from Therapeutic Transport, a firm licensed to transport difficult children to various camps and other secure facilities. Therapeutic Transport removed the minor child at the direction of the

custodial parents, the Petitioners, and then transported him to Camp Tracy, a Christian camp in Jacksonville, Florida. The Respondent sought the assistance of the Monroe District Court alleging domestic violence by the Petitioners against T.S. and attained a temporary order of custody from the Monroe District Court. Using that Order, the Respondent removed the child from Camp Tracy and brought him to Kentucky. A hearing was held before the Monroe District Court and the Monroe District Judge found domestic violence to be present and entered an Order against the Petitioners. The parents appealed, however, the appeal was filed beyond the statutory time frame and was dismissed.

Under the Order of the District Court, placement was to be reviewed at the end of the school year, at which time the natural parents again moved to set aside the domestic violence order and regain custody of T.S. During the processing of that action the grandparents filed a petition for permanent custody in the Monroe Circuit Court alleging de facto parent status under the recently enacted modifications to KRS 403.270, which granted de facto parent status to third parties if certain statutory elements are present. The matter was presented for trial and after two days of testimony during which time the Petitioners argued that the statute KRS 403.270 unconstitutionally interfered with their rights to raise their minor child. The Circuit Court found, by clear and convincing evidence, in accordance with KRS 403.270 that the Petitioners were de facto custodians of T.S. and as such assumed equal standing to that of his parents. Upon that finding, the Court then found it was in the best interest of the minor child that custody be awarded to the grandparents in this case.

The natural parents timely appealed the decision of the Monroe Circuit Court to the Kentucky Court of Appeals. In an opinion rendered by the Kentucky Court of Appeals on January 18, 2002, the Court affirmed the decision of the Monroe Circuit Court, finding that KRS 403.270(1) did not significantly alter the preexisting law of custody in the Commonwealth of Kentucky and found that the constitutional rights of the Petitioners were not violated. Petitioners then filed a Motion for Discretionary Review with the Kentucky Supreme Court and said Motion for Discretionary Review was denied June 3, 2002. It is from that opinion of the Kentucky Court of Appeals and the denial of the Motion for Discretionary Review that this Petition for Writ of Certiorari is requested.

REASONS FOR GRANTING WRIT

Argument One

THE KENTUCKY COURT OF APPEALS IN ITS OPINION ERRED IN ITS BELIEF THAT KRS 403.270(1) DID NOT SIGNIFICANTLY ALTER THE PREEXISTING LAW OF CUSTODY DETERMINATIONS IN KENTUCKY AND THEREBY VIOLATED PETITIONERS LIBERTY INTERESTS UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Kentucky Court of Appeals, on page nine of its opinion, noted that the Petitioners contested the constitutionality of KRS 403.270(1) using the "as applied to" standard, which governs constitutional challenges. In review of the case law in this area a recent case, *City of Chicago v. Morales*, 144 L. Ed 2d 67, 527 US 471, 119 S. Ct 1849, bears great discussion with regard to facial

challenges and the "as applied to" standard in viewing unconstitutionality of state statutes. The standard for both facial challenges and "as applied to" challenges is under case law the same. Despite the fact that the Attorney General was not made a party to this action on appeal from the Circuit Court, the Court nevertheless viewed the statute under the "as applied to standard" in making its determination as to the constitutionality of KRS 403.270. In this case at bar, however, this statute is so vague that its application is noted in the Court's opinion that "...although a case in which the natural parents have been forced to abandon their children would be more constitutionally troubling"... here Mark and Laurie voluntarily abandoned T.S. and failed for reasons other than poverty alone, to provide essential care for T.S." The facts suggest just the opposite. The Monroe District Court forcibly took T.S. from the custody of the natural parents and vested temporary custody in the grandparents based on an overreaching application of the Kentucky Domestic Violence Statute. Following that, while some visitation was permitted, it is clear that the temporary custodians would not participate in the facilitating the reconnecting of T.S. and his parents. Testimony taken at the hearing from both sides specifically addressed the fact that the parents were fit in raising their children. The fact that the parents remain custodians of their four other children further attests to that fact. Because the statute does not require a finding of unfitness, the standard for parental custody has changed and is in direct conflict with the fundamental liberty interests set forth in a series of four holdings including *Reno v. Flores* 507 U.S. 292, 113 Supreme Court 439, 123 82nd(1993); *Santosky v. Kramer* 455 U.S. 745 102 Supreme Court 1388, 71 82nd(1982); and *Troxille v. Granville,* 530 U.S. 57, 120 S. Ct. 2054, 127 L. Ed 2d 49 (2000). The

Appellate Court also conceded prior to the enactment of the statute, that parents could not lose custody of their children to a third party absent of showing unfitness by clear and convincing evidence. See *Davis v. Collingsworth, Ky.*, 771 S.W. 2d 329, 330 (1989). The Court of Appeals went on to note four factors under the former standard that could be construed as elements to be determined as to the fitness of the parents. In its Opinion it went on to further note that only two of the four factors were contained in the statute as amended in 1998. It is clear, based on the testimony in this particular trial that the parents were not unfit and that the conflict between the grandparents and the parents had little to do with parenting ability and much to do with religious and educational training. To allow the parents' fundamental rights to be defeated by the application of KRS 403.270(1) in this action deprives the natural parents of their due process rights under the Constitutional guarantee set forth in the Fourteenth Amendment to the Constitution.

CONCLUSION

It is for that reason that Court should grant Petitioners request for a Writ of Certiorari to review the opinion of the Kentucky Court of Appeals in light of the constitutional challenge to the application of KRS 403.270 to the Petitioners.

Respectfully submitted,

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APPENDIX A

IN THE SUPREME COURT OF KENTUCKY

MARK ANTHONY SHERFEY, SR. ET AL.,

v.

MARCUS D. SHERFEY, ET AL.

Monroe Circuit Court
No. 2000-CI-93

No. 2002-SC-84-D
(2001-CA-519-MR)

ORDER DENYING DISCRETIONARY REVIEW

The motion for discretionary review of the decision of the Court of Appeals is denied.

ENTERED June 5, 2002

ENTERED
JUNE 5, 2002

Supreme Court of
Kentucky

/s/_____
Chief Justice

APPENDIX B

RENDERED:JANUARY 18, 2002; 10:00 a.m.
TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 2001-CA-000519-MR

MARK ANTHONY SHERFEY, SR. AND LAURIE SHERFEY, APPELLANTS,

v.

MARCUS D. SHERFEY AND NAOMI SHERFEY, APPELLEES.

APPEAL FROM MONROE CIRCUIT COURT
HONORABLE JAMES G. WEDDLE, JUDGE
ACTION NO. O0-CI-00093

BEFORE: DYCHE, JOHNSON AND KNOPF, JUDGES.

JOHNSON, JUDGE: Mark Anthony Sherfey, Sr., and Laurie Sherfey have appealed from an order entered by the Monroe Circuit Court, on February 23, 2001, which awarded custody of their son, T. S., to his paternal grandparents, Marcus D. Sherfey and Naomi V. Sherfey. Having concluded that the trial court's finding that the grandparents met the statutory definition of "de facto custodians," pursuant to KRS

403.270(1) [1] is not clearly erroneous, and that the trial court did not abuse its discretion in awarding custody to the grandparents, we affirm.

For some time prior to June 1998, T. S., who was born on October 23, 1985, had experienced a troubled relationship with his parents. T. S. left his parents' home on June 18, 1998, and walked to his grandparents' residence a short distance away. One month later, in July 1998, T. S.'s parents moved from Kentucky to Tennessee, voluntarily leaving T. S. behind.

For the better part of the next two years, T. S. lived with his paternal grandparents. During that time period T. S. became involved in school, church and community activities. According to his teachers and coaches, T. S. is a well-adjusted and content teenager.

From July 1998 through June 1999, T. S. had very little contact with his parents. His grandparents provided nearly all of his financial and emotional support. The only period of disruption in T. S.'s new life with his grandparents was a one-month stay at Camp Tracy, located in Jacksonville, Florida. The one-month stay at this Christian facility had been secretly planned by T. S.'s parents. T. S. did not want to attend the camp and had to be forcibly removed from his grandparents' house by Therapeutic Transports, a firm specializing in the transportation of "difficult" children.

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[1] Kentucky Revised Statute

Outraged by the clandestine efforts of Therapeutic Transports, the grandparents filed an action in the Monroe District Court, seeking the issuance of a domestic violence order against their son, Mark Sherfey. After filing the action, the grandparents had T. S. returned to their custody on July 17, 1999, exactly one month after he had been taken from their home by Therapeutic Transports. On September 21, 1999, the Monroe District Court entered a domestic violence order against Mark Sherfey, but set the matter for review at the conclusion of the 1999-2000 school year. In the meantime, T. S.'s life with his grandparents apparently continued as it had before.

In July 2000, Mark Sherfey collaterally attacked the September 1999 domestic violence order. In his motion to set aside the order, he alleged that the trial court had lacked personal jurisdiction over him. The grandparents responded on July 25, 2000, by filing a petition for custody of T. S. in Monroe Circuit Court. The parties then agreed to dismiss the domestic violence action in the district court and to proceed before the circuit court solely on the issue of custody. On February 23, 2001, following an evidentiary hearing, the Monroe Circuit Court entered a judgment granting custody of T.S. to his grandparents. This appeal followed.

Over the past century, changing demographics have greatly altered traditional notions of the average American family. Increases in single parentage and non-traditional family structures have expanded the family roles and responsibilities of grandparents and other third parties. In recognition of this modern trend, many state legislatures have passed various non-parental visitation and custody statutes.

Seemingly, the aim of these statutes is to protect the welfare of children who have developed parental-type relationships with such third parties. These statutes, however, do not come without a cost. Vesting greater rights in third parties clearly places a substantial burden on the traditional parent-child relationship, raising questions of constitutional import.[2]

In Kentucky, our legislature has promulgated KRS 403.270(1), which gives "de facto custodians" the same standing in custody matters as each of the child's parents. KRS 403.270(1) defines a "de facto custodian" as "a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of ... one (1) year or more if the child is three (3) years of age or older...." However, the statute goes on to caution that: "Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period."

Mark and Laurie have raised three issues in their appeal: (1) whether the grandparents had met the "de facto custodian" time requirement; (2) whether KRS 403.270(1) unconstitutionally infringes on their fundamental rights as parents to have custody and control of their children; and (3) whether the trial court's findings were clearly erroneous or whether its custody decision was an abuse of discretion.

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[2] *See* Troxel v. Granville, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000).

We must first determine whether the grandparents properly qualified as "de facto custodians" under the one-year custodial period required by KRS 403.270(1)(a). Mark and Laurie argue: (1) that T.S.'s visit to Camp Tracy sufficiently interrupted the period of time during which the grandparents provided support, causing them to fall short of the one-year period necessary for "de facto custodian" status, and (2) that, in the alternative, court appearances by Mark and Laurie to defend a juvenile petition and a domestic violence action constitute a tolling of the one-year time period.

We hold that T.S.'s one-month stay at Camp Tracy did not disqualify the grandparents from achieving "de facto custodian" status. From the record, it is clear that T.S. spent roughly two years under the care and custody of his grandparents prior to the filing of the current action. The nonconsensual transporting of T.S. to Florida was adjudged by the courts of Kentucky to be an act of domestic violence--not an abandonment of support by the grandparents.[3] Further, T.S. never fully left the custody and control of his grandparents. He merely spent an unhappy month at a camp where he continued to maintain contact with his grandparents. Obviously, every parent who sends his or her child to a summer camp has not surrendered custody of the child.

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[3] *Cf.* KRS 403.270(4): "The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment."

We now turn to Mark and Laurie's alternative argument, that their defenses to a juvenile petition and a subsequent domestic violence petition, both regarding T.S., constitute a suspension of the time period in which the grandparents cared for T.S. In deciding this issue, we are confronted with interpreting the meaning of KRS 403.270(1). In construing our statutes we must "ascertain and give effect to the intent of the General Assembly. We are not at liberty to add or subtract from the legislative enactment nor discover meaning not reasonably ascertainable from the language used."[4] ... Clearly, it is not our function to "add words and meaning to a statute that is clear on its face."[5] "The intention 'must be determined from the language of the statute itself if possible.' "[6]

The pertinent provision of KRS 403.270(1)(a) specifies that "[a]ny period of time after a legal proceeding has been *commenced* by a parent *seeking to regain custody* of the child shall not be included in determining whether the child has resided with the person for the required minimum period" [emphasis added]. We believe that this language is

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[4] Posey v. Powell, Ky.App., 965 S.W.2d 836, 838 (1998) (quoting Beckham v. Board of Education of Jefferson County, Ky., 873 S.W.2d 575, 577 (1994)).

[5] *Id.* (quoting Cole v. Thomas, Ky.App., 735 S.W.2d 333, 335 (1987)).

[6] Gurnee v. Lexington-Fayette Urban County Government, Ky.App., 6 S.W.3d 852, 856 (1999) (quoting Moore v. Alsmiller, 289 Ky. 682, 160 S.W.2d 10, 12 (1942)).

clearly stated and specific in its terms. In order to suspend a period of residency with a "de facto custodian," the statute sets forth two requirements. First, the statute requires that the action be "commenced" by the parent--not merely defended. Second, the statute requires the court appearance to be an action in which the parents seek to "regain custody." From the plain language of the statute, it is clear that Mark and Laurie satisfied neither of these requirements. Not once during the two years T.S. spent with his grandparents did Mark and Laurie *initiate* a legal action to *regain custody* of T.S. In fact, it appears they voluntarily abandoned T.S., showing little concern for his daily well-being for nearly two years. Accordingly, we affirm the trial court's finding of *de facto* custodianship by the grandparents.

We now turn to Mark and Laurie's argument that KRS 403.270(1) is unconstitutional.[7] The due process clause of the Fourteenth Amendment to the United States Constitution has long been recognized to contain a substantive component that "'provides heightened protection against government interference with certain fundamental rights and liberty

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[7] It is not clear from their brief whether Mark and Laurie contest the facial constitutionality of the statute or whether they merely challenge the statute's constitutional validity as applied to them. In any event, we can only address the "as-applied" constitutional challenge because the Attorney General was not given notice of the facial challenge pursuant to KRS 418.075 and Kentucky Rules of Civil Procedure (CR) 24.03. *See* Maney v. Mary Chiles Hospital, Ky., 785 S.W.2d 480 (1990).

interests.'"[8] The liberty interest at issue in this case, one of the oldest and most clearly established, is the interest of parents in the care, custody, and control of their children.[9] Over the years, the United States Supreme Court has jealously guarded this right, and has not encroached on it absent some compelling reason.[10]

Prior to the passage of KRS 403.270, parents could not lose custody of their children to a third party absent a showing of unfitness by clear and convincing evidence.[11] Our courts have stated that indicators of unfitness include such factors as "(1) evidence of inflicting or allowing to be inflicted physical injury, emotional harm or sexual abuse; (2) moral delinquency; (3) abandonment; (4) emotional or mental illness; and (5) failure, for reasons other than poverty alone,

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[8] Troxel, *supra*, 530 U.S. at 65, 147 L.Ed.2d at 56 (quoting Washington v. Glucksberg, 521 U.S. 702, 719, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997)).

[9] *Id.*

[10] *See* Reno v. Flores, 507 U.S. 292, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993) (holding that so long as the parent adequately cares for his or her child, there will normally be no reason for the state to inject itself into the private realm of the family).

[11] *See e.g.*, Davis v. Collingsworth, Ky., 771 S.W.2d 329, 330 (1989) (citing Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982); and Stanley v. Illinois, 405 U.S. 645, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972)).

to provide essential care for the children."[12] Thus, unless some or all of the above factors were demonstrated the custodial rights of a natural parent always prevailed over the rights of a non-parent.

As applied to Mark and Laurie, we do not believe that the passage of KRS 403.270(1) significantly alters the preexisting law of custody determination in Kentucky. Although a showing of "unfitness" is not specifically required by KRS 403.270(1), the prerequisites necessary to prove "de facto custodianship" directly implicate at least two of the former unfitness factors. To be a *de facto* custodian under KRS 403.270 (1) (a) a person must be the primary caregiver for and financial supporter of the child. Although a case in which the natural parents have been forced to abandon their children would be more constitutionally troubling, here Mark and Laurie voluntarily abandoned T. S. and failed, for reasons other than poverty alone, to provide essential care for T. S. A finding of unfitness would have been warranted in this case; therefore, it cannot be held that Mark and Laurie's constitutional rights were violated.

As their final claim of error, Mark and Laurie argue that the trial court's findings were clearly erroneous and that its determination of custody was an abuse of discretion. "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of

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[12] *Id.*

the trial court to judge the credibility of the witnesses."[13] A factual finding is not clearly erroneous if it is supported by substantial evidence.[14] "Substantial evidence" is evidence of substance and relevant consequence sufficient to induce conviction in the minds of reasonable people.[15] After a trial court makes the required findings of fact, it must then apply the law to those facts. The resulting custody award as determined by the trial court will not be disturbed unless it constitutes an abuse of discretion.[16] "Abuse of discretion in relation to the exercise of judicial power implies arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision." . . . "The exercise of discretion must be legally sound."[17]

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[13] CR 52.01; Carnes v. Carnes, Ky., 704 S.W.2d 207, 208 (1986).

[14] Owens-Corning Fiberglass Corp. v. Golightly, Ky., 976 S.W.2d 409, 414 (1998); Uninsured Employers' Fund v. Garland, Ky., 805 S.W.2d 116, 117 (1991); Faulkner Drilling Co.. Inc. v. Gross, Ky.App., 943 S.W. 2d 634, 638 (1997).

[15] Golightly, 976 S.W.2d at 414; Janakakis-Kostun v. Janakakis, Ky.App., 6 S.W.3d 843, 852 (1999) (citing Kentucky State Racing Commission v. Fuller, Ky., 481 S.W.2d 298, 308 (1972)).

[16] Bickel v. Bickel, Ky., 442 S.W.2d 575, 577 (1969); Carnes, *supra*.

[17] Kuprion v. Fitzgerald, Ky., 888 S.W.2d 679, 684 (1994).

We hold that the trial court's factual findings were clearly supported by substantial evidence and that its custody ruling based on those factual findings was not an abuse of discretion. Before T. S. left his parents' home, he was a troubled teenager who fought often with his parents and siblings. After leaving home and moving in with his grandparents, T. S. became involved in school, church and community activities. According to T. S.'s teachers and coaches he is well-adjusted and apparently happy. During the two-year period away from his parents, T. S. had little contact with them. Mark and Laurie did not support T. S. financially and they did not express any overwhelming desire to visit with him. In short, T. S. has severed ties with his parents and chooses to live with his grandparents. In fact, T. S. has strongly stated his desire to continue living with his grandparents. Although, from the same evidence, a different trial judge might have overridden T. S.'s wishes and returned him to his parents' custody, the Monroe Circuit Court's decision to place T. S. with his grandparents was supported by substantial evidence and was not an abuse of discretion.

For the foregoing reasons, the judgment of the Monroe Circuit Court is affirmed.

ALL CONCUR.

FILED
JAN 18, 2002

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Monroe Circuit/
District Courts

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APPENDIX C

COMMONWEALTH OF KENTUCKY
29TH JUDICIAL DISTRICT
MONROE CIRCUIT COURT
CIVIL ACTION NO. 00-CI-00093

MARCUS D. SHERFEY
and
NAOMI SHERFEY, PETITIONERS,

v.

MARK ANTHONY SHERFEY, SR.
and
LAURIE SHERFEY, RESPONDENTS.

FINDINGS OF FACT, CONCLUSION OF LAW, AND JUDGMENT

This action having come before the Court for an Evidentiary Hearing on September 29, 2000 and on November 29, 2000 and the Court having heard testimony from the witnesses on behalf of the Petitioners; testimony from the witnesses on behalf of the Respondents; an interview with the infant child; arguments of counsel; and reviewed the Memorandum of Law submitted by counsel and being fully and sufficiently advised,

DOES HEREBY FIND, ORDER AND ADJUDGE as follows:

FINDINGS OF FACT

1. Tony Sherfey, born October 23, 1985, is fifteen (15) years of age and is the son of Respondents, Mark and Laurie Sherfey. Tony is the grandson of Petitioners, Marcus D. Sherfey and Naomi Sherfey.

2. Tony Sherfey became a resident of Petitioners household in June of 1998.

3. It is undisputed that Petitioners were the primary care givers and financial supporters of the above child during the period from June, 1998 to the present.

4. Both Petitioners and Respondents want custody of Tony. Tony's desire is to remain with his grandparents.

5. Respondents previously lived in Monroe County, Kentucky, and were moving to Tennessee when Tony came to live with Petitioners. Tony had been home-schooled but has now been in public schools the past two and one-half years. The Court heard testimony from teachers, a coach and church personnel and is convinced that Tony is deeply involved and well adjusted in his school, church and community activities.

6. There was evidence that Tony was causing disruptions and having adjustment problems prior to his move

to Petitioners home. All evidence indicates that those problems are under control with Petitioners.

7. Tony has been well supported and cared for in all his school, church and personal activities by his Grandparents and has been nurtured by them as if he were their own child. His grades are good and he is involved in numerous school activities.

8. This Court finds that the relationship between Tony and Respondents was not good at the time of their move from Kentucky in 1998, and that it is worse at this time. Based on the testimony before the Court, there is no reason to believe that a replacement of Tony in the home of his parents at this time would be in his best interest.

9. It is disputed as to what occurred on the actual day that Respondents left for Tennessee. However, it is undisputed that Tony has remained with Petitioners for over two years prior to the filing of the Petition herein. During that time, Petitioners provided all care-giving, all nurturing and all financial support. During that period, Respondents filed no action to regain Tony.

10. Testimony from teachers, coaches and others at the hearings herein, prove that Tony is trying hard in school, is very interested and is very successful in his present circumstances. Tony expressed an interest in continuing his education and having a career in law or TV production.

11. In his present circumstances, Tony is under control and cooperates. He is not experiencing out of control rage.

12. In the summer of 1999, Respondent hired a service that entered Petitioners' home without permission and took Tony against his will. Respondents placed him directly in a "boot camp" in Florida. Petitioners secured his return with a domestic violence order from Monroe District Court that remains in effect until this Court rules on this custody petition.

CONCLUSIONS OF LAW

13. This Court has jurisdiction to decide the custody of Tony Sherfey by virtue of him being a resident in Monroe County for more than eighteen months prior to the filing of this Petition. The Monroe Circuit Court is proper venue for this action. All parties are properly before the Court.

14. This Court concludes, based upon clear and convincing evidence in accordance with KRS 403.270(1)(a), that Petitioners are de facto custodians of Tony Sherfey and as such have the same standing as his parents, the Respondents, as this Court determines custody of Tony. Upon determining that Petitioners are de facto custodians, the Court must then determine the best interest of Tony and make an award of custody based upon his best interest.

15. It is in the best interest of the infant, Tony Sherfey, that his custody be awarded to the Petitioners.

JUDGMENT

IT IS HEREBY ORDERED AND ADJUDGED that custody of Tony Sherfey be and is awarded to the Petitioners. Tony Sherfey is encouraged to communicate with his parents and siblings on a monthly basis. This Court will consider visitation upon proper motion and notice.

There being no just cause for delay, this is a final and appealable judgment.

GIVEN UNDER MY HAND AS JUDGE of the Monroe Circuit Court, this 21st day of February, 2001.

/s/James G. Weddle
JAMES G. WEDDLE, JUDGE

DISTRIBUTION:

ENTERED
FEB 23, 2001

Joyce Emberton,
Monroe Circuit/
District Courts

Hon. William Yesowitch
Barber, Banaszynski & Assoc.
100 North Sixth Street, Fifth Floor
Louisville, Kentucky 40202
Attorney for Respondents

Hon. Danny Basil
113 West Public Square
Suite 302
Glasgow, Kentucky 42141
Attorney for Petitioners

APPENDIX D

COMMONWEALTH OF KENTUCKY
MONROE DISTRICT COURT

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGEMENT

* * *

The defendant owns and operates a business of abducting incorrigible youths on the request of parents or guardians and taking them to reform institutions. He was hired by Dr. Mark Sherfey, to abduct his son, Anthony Sherfey from Marcus Sherfey's home and take him to a Florida institution.

In 1998 criminal abuse charges had been filed against Dr. Mark Sherfey on behalf of Anthony Sherfey in this Court's juvenile division. This Court gave temporary emergency custody of Anthony Sherfey to his grandfather Marcus Sherfey. However, the case was dismissed in October of 1998 on the request of the Commonwealth. Therefore, at that time custody of Anthony reverted back to his parents, and on June 18, 1999 Dr. Mark Sherfey had technical legal custody of Anthony, even though Anthony continued to reside with his grandparents.

FINDINGS OF FACT/CONCLUSIONS OF LAW

1. Dr. Mark Sherfey had technical legal custody of Anthony Sherfey on June 18, 1999.

2. Dr. Sherfey hired the defendant to abduct his son on that day.

3. Dr. Sherfey accompanied the defendant to the Marcus Sherfey residence, let him in the house and took part in the abduction.

4. Dr. Sherfey gave the defendant the impression that the abduction was with the apparent consent of Marcus Sherfey and his wife.

5. Under the extreme and unusual circumstances of this case, it is reasonable to believe that the defendant did not know that his entry into the Marcus Sherfey residence was unlawful.

6. Without the necessary "mens rea" the defendant cannot be guilty of the crime charged.

JUDGMENT

Though the actions of the defendant and Dr. Sherfey on June 18, 1999 were despicable and no doubt caused trauma to young Anthony Sherfey, they were not criminal. The defendant may have been negligent in not ascertaining the full family and legal situation that existed on June 18, 1999, but that does not make his actions criminal. Therefore, the defendant is not guilty of Criminal Trespass.

This is a final appealable Order of the Court.

This the 3RD day of December, 1999.

/s/ Steve D. Hurt
STEVE D. HURT, Judge
Monroe District Court

FILED
DEC 03, 1999

Joyce Emberton,
Monroe Circuit/
District Courts

Distribution:

Hon. A. Thomas Davis
Assistant County Attorney

Mr. Dana Conner
Defendant

APPENDIX E

COMMONWEALTH OF KENTUCKY
MONROE DISTRICT COURT
CIVIL ACTION NO. 99-D-00048-01

MARCUS D. SHERFEY;
on behalf of Tony Sherfey,
Petitioner/Appellee,

vs.

MARK ANTHONY SHERFEY, SR.,
Respondent/Appellant.

NOTICE OF APPEAL

1. The name of the Appellant is Mark Anthony Sherfey, Sr.

2. The name of the Appellee is Marcus D. Sherfey, on behalf of Tony Sherfey.

3. The Judgment from which this appeal is being taken in the Judgment on September 21, 1999, copies of which are attached hereto and made a part hereof as if fully copied herein.

FILED
NOV 17, 1999

Joyce Emberton,
Monroe Circuit/
District Courts

/s/Temple Dickinson
TEMPLE DICKINSON
GILLENWATER, HAMPTON, & DICKINSON
103 East Main Street
Glasgow, KY 42141

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing was mailed to Clay Hundley, 209 North Main Street, Tompkinsville, KY 42167, this 26th day of October, 1999.

/s/Temple Dickinson
TEMPLE DICKINSON
Attorney for Appellant

APPENDIX F

COMMONWEALTH OF KENTUCKY
29TH JUDICIAL DISTRICT
MONROE DISTRICT COURT

CIVIL ACTION NO. 99-D-00048-O1

MARCUS D. SHERFEY, on behalf of Tony Sherfey, Petitioner/Appellee,

vs.

MARK ANTHONY SHERFEY, SR., Respondent/Appellant.

MOTION TO DISMISS APPEAL

COMES THE PETITIONER/APPELLEE, MARCUS D. SHERFEY, BY COUNSEL, AND MOVES THE COURT TO DISMISS THE APPEAL OF THE ABOVE CASE TAKEN FROM A JUDGMENT ENTERED BY THE MONROE DISTRICT COURT ON SEPTEMBER 21, 1999, ON THE GROUNDS THAT SAID APPEAL IS LATE, AND NOT TIMELY FILED.

In support of the herein motion, the Petitioner/Appellee states as follows:

1. The first judgment from which this appeal is taken, was entered on July 28, 1999, following a hearing on the issue. On the 6th day of August, 1999, the Respondent

filed a "Notice and Motion for Reopening and Reconsideration and Motion for Modification of Order."

2. After several postponements, occasioned by the Respondent, the Court held a hearing on September 21, 1999, and on such date entered an order modifying the July 28, 1999, order.

Thereafter, on September 29, 1999, the Respondent filed a second Motion for Reargument, Reopening, and Reconsideration, and for Modification of Order." In other words, Respondent filed a second Motion to Modify and Reconsider the July Judgment, as Modified by the September 21, 1999, Order.

CR 59.05 makes no provision for alteration of an order ruling on a previous judgment. Respondent's proper remedy on September 21, 1999, was to appeal, not to make a second motion for reconsideration. The Court of Appeals faced with the exacts ituation in *Cloverleaf Dairy vs. Michaels*, Ky. App. 636 SW 2d 894, held Respondent could not make a second motion for reconsideration, his remedy was to appeal.

The time for appeal in this case began to run on September 21, 1999. The second motion to reconsider was a nullity, not authorized by the rules, and did not prevent the 30 day appeal time from running. The time to appeal the judgment expired on October 21, 1999.

3. Even if the second motion for reconsideration had legal validity, the Respondent/ Appellant, on September

29, 1999, filed a bare bones motion, which stated "as grounds thereof, a memorandum of law will be submitted before the hearing date." Other than this statement, the motion did not state with particularity the grounds for same, nor did it set forth the relief or the order of the Court sought. Civil Rule 7.02 provides that a motion "shall state with particularity the grounds therefore . . . " The motion is therefore insufficient under said Rule.

4. While the Petitioner is not certain as to the exact nature of Respondent's October 4, 1999, motion, boiled down to the basics, it must be a motion for a new trial as provided in Civil Rule 59.01, or a motion to alter, amend or vacate a judgment as provided in Civil Rule 59.05. The time for appeal began to run on September 21, 1999, when the Monroe District Court ruled on the motion to make more specific the judgment entered on July 28, 1999.

In either event, the Rules require that the motion be served not later than ten (10) days after entry of the judgment from which the motion attempts to alter.

In this case, the Respondent/Appellant has filed a bare bones motion, which gives no grounds for relief sought, contains no explanation of the basis for the motion, and submitted no grounds or affidavits at the time of filing or subsequent to the actual date of the hearing on October 26, 1999.

The Appellee, Marcus D. Sherfey, asserts that said motion, even if valid, was not timely filed, was tardy, and that the Trial Court had no discretion to consider a tardy motion

or to grant subsequent new trial relief. The Appellee asserts that such motion did not toll the 30 days within which time an appeal must be filed, and that the filing of the notice of appeal on October 26, 1999, was late, and that the appeal should be dismissed.

5. The herein case is exactly in point in with Ligon Specialized Hauler. Inc., vs. Smith, Ky. App. 691, S.W. 2d 902, wherein the Court held:

> "We think the plain purpose of Civil Rule 59.02 would stand defeated if we allow appellant to toll its provisions by filing a timely but unexplained Civil Rule 59.01 motion while submitting grounds and affidavits to the Court at its leisure. Accordingly, Ligons allegations . . . were not timely raised at trial and are not preserved for our review."

In the case at bar the Respondent filed a bare bones motion, containing no supporting data or reasons therefore, which motion under the holdings of Ligon was a tardy motion, and not timely filed. The motion therefore did not toll the running of the rule requiring that the notice of appeal be filed within 30 days from the entry of the judgment.

WHEREFORE, the Appellee, Marcus D. Sherfey, prays that the appeal of the herein action to the Monroe Circuit Court be dismissed.

This 9th day of November, 1999.

FILED
NOV10, 1999

Joyce Emberton,
Monroe Circuit/
District Courts

/s/Clay Hundley, Jr.
Clay Hundley, Jr.
Attorney for Petitioner/Appellee
209 N. Main Street
Tompkinsville, KY 42167
(270) 487-6403

CERTIFICATE OF SERVICE

This is to certify that a copy
of the foregoing motion
was mailed, postage prepaid to:

Hon. Temple Dickinson
Attorney for Respondent/Appellant
103 East Main Street
Glasgow, KY 42141

This 9th day of November, 1999.

/s/ Clay Hundley, Jr.
Clay Hundley, Jr.
Attorney for Petitioner/Appellee

APPENDIX G

AOC-275.3 Doc. Code: ODV
Rev. 1-99
Page 1 of 2

Commonwealth of Kentucky
Court of Justice
KRS 403

Case No. 99-D-00048-001
Court: District
County: Monroe

AMENDED DOMESTIC VIOLENCE ORDER

Marcus D. Sherfey, on behalf of
Tony Sherfey, Jr., Petitioner,

Petitioner's DOB: 11/5/33
DOB of minor family members: 10/23/85
Relationship to Petitioner: Grandchild

v.

Mark Anthony Sherfey, Sr.,
Respondent

Respondent's DOB:10/28/57
SSN: 407-92-1346
Sex: M Race: W

4355 Hanging Limb Highway
Monterey, TN 38574

The Court having jurisdiction over the parties and matter and Kentucky law having provided respondent notice and opportunity to be heard, and the Court, having heard the evidence and being sufficiently advised, **FINDS**:

The Respondent has filed a motion to amend the Domestic Violence Order dated 7/30/99.

IT IS HEREBY ORDERED:

That the motion to amend is sustained. That the prior order is amended pursuant to a show cause hearing. The prior order is amended as follows, and all prior inconsistent provisions of such prior order are superseded as follows:

Custody/visitation to be reviewed at end of Monroe Co. School year. Visitation: child may leave Monroe Co. Ky. on visitation w/father by written consent of all parties.

FILED
SEPT 21, 1999

Joyce Emberton,
Monroe Circuit/
District Courts

9/21/99
Date

/s/ Steve D. Hunt
Judge

APPENDIX H

Commonwealth of Kentucky
Court of Justice
KRS 403

Case No. 99-D-00046
Court: District
County: Monroe

DOMESTIC VIOLENCE EMERGENCY PROTECTIVE ORDER
And Summons

Marcus D. Sherfey, on behalf of Tony Sherfey, Petitioner

Petitioner DOB: 11/5/33

v.

Mark Anthony Sherfey, Sr., Respondent

Respondent's DOB: 10/28/57
SSN: 407-92-1346
Sex: M Race: Cauc

4355 Hanging Limb Highway
Monterey, TN 38574

The Court having jurisdiction over the parties and matter and Kentucky law providing respondent notice and opportunity to be heard, and the Court, having reviewed the petition and being sufficiently advised finds that the

allegations indicate an immediate and present danger of domestic violence and abuse.

THEREFORE, IT IS HEREBY ORDERED:

That the above named Respondent be restrained from any contact or communication with the above named Petitioner;

> by remaining at all times and places at least 1,000 feet away from Petitioner and members of Petitioner's family or household;

That the above named Respondent be restrained from committing further acts of domestic violence and abuse;

That the above named Respondent be restrained from disposing of, or damaging any property of the parties;

In accordance with the criteria of KRS 403.270, 403.320, 403.420, temporary custody of Tony Sherfey (Mark Anthony Sherfey, Jr.) be awarded to Marcus D. Sherfey and/or Naomi Sherfey (or the survivor of them if either one predecease the other);

In order to assist in eliminating future acts of domestic violence and abuse; Return child to Monroe County, Kentucky.

This Order shall continue until Tues., July 27, 1999 (not to exceed 14 days from date of issuance pursuant to KRS 403.740(3).) A hearing will be held on that date in Monroe County Courthouse at 11:30 a.m. A legal action has been

filed against you in this court, alleging facts and demanding relief as shown in the document(s) delivered to you herewith. You are summoned to appear on this date, time, and place to respond to the allegations. You must produce at the above court appearance: income tax returns, paystubs, or employer statements to document your income in the event temporary child support is ordered. If you are self-employed, you must produce receipt and expense statements. **Violation of this Order shall constitute contempt of this Court and may result in criminal charges. Any Peace Officer shall arrest the Respondent without a warrant upon probable cause that a violation of this Order has occurred.**

/s/ Judge
Trial Comm 7/16/99 at 1:30 am

These documents were served by delivering true copies to: Mark Sherfey, this 21st day of July, 1999 at 2:40 o'clock p.m.

FILED
JUL 21, 1999

Joyce Emberton,
Monroe Circuit/
District Courts

APPENDIX I

AOC-275.1 Doc. Code: COM
Rev. 3-99

Commonwealth of Kentucky
Court of Justice
KRS 403

Case No. 99-D-00046
Court: District
County: Monroe

DOMESTIC VIOLENCE
PETITION/MOTION

Marcus D. Sherfey,
Petitioner, Petitioner's DOB: 11/5/33

v.

Mark Anthony Sherfey, Sr.,
Respondent. Respondent's DOB: 10/28/57
Sex: M Race: Cauc
4355 Hanging Limb Highway Height: 5'7" Weight: 160
Monterey, TN 38574 Hair: Brown Eyes: Brown
SSN: 407-92-1346

Petitioner, on behalf of minor child(ren) says that on 6/18/99, in Monroe County, Kentucky, the above named Respondent engaged in act(s) of domestic violence and abuse, in that Mark Anthony Sherfey, Jr. Age 13, was taken by auto from the Petitioner's home by his father and 3 hired "thugs" (unknown) and forced Tony (Mark, Jr.) into a vehicle with 3 unknown individuals and held him prisoner for 12 hours or longer and drove him over 800 miles to a camp near Jacksonville, Florida. Tony is presently in this camp and is being held against his will, which is harmful to his mental health as well as being "endangered" of physical abuse by the drug offenders and sexual offenders at said camp. Tony has lived with Petitioner for more than 1 year and been a resident of Monroe County.

1. Describe the Petitioner or any minor family member on whose behalf the petition is filed: Tony (Mark Anthony Sherfey, Jr.), Age 13.

2. The respondent is my child.

"See attached letter."

Pg.1 of 2

Petitioner, on behalf of minor child(ren) requests that the Court:

restrain the Respondent from any contact with the Petitioner except as directed by the court;

and /or restrain the Respondent from committing further acts of domestic violence and abuse;

and/or restrain the Respondent from disposing of, or damaging any property of the parties;

and/or grant temporary custody of minor child(ren); and/or other relief, which would assist in stopping further domestic violence (describe: Return child to Monroe County, Kentucky).

The Petitioner states that the allegations contained herein are true on information and belief.

COURT ACTION:
EPO/Summons Issued
Judge: /s/_____
Date: 7/16/99 1:30 pm

FILED
JUL 16, 1999

Joyce Emberton,
Monroe Circuit/
District Courts

Sworn to before me this 16th day of July, 1999.
/s/ Peggy Davis
A.O. Monroe Co. Att. Office

/s/ Marcus Sherfey
Signature of Petitioner/Movant

ATTACHED LETTER TO APPENDIX I

Commonwealth of Kentucky
Office of the Monroe County Attorney
P.O. Box 155
Tompkinsville, Kentucky 42167
(502) 487-5568
(502) 487-6932

Mark Anthony Sherfey, Jr. is now confined . . . and criminal offenders. He has been threatened with corporal punishment for merely talking to any person other than his immediate supervisor. He cannot communicate with the Petitioners, or even his own parents, and is in constant fear of corporal punishment from his supervisor.

The camp where he is being held is not approved by the Florida Department of Human Resources, and has been the subject of abuse charges on other occasions.

The child, Mark Anthony Sherfey, Jr., was abducted by physical force and against his will physically transported over 800 miles in the dead of night. The violence accompanying the abduction and the threats of violence, and threats of physical injury were real and caused real fear to the child.

The child, Mark Anthony Sherfey, Jr., who has led a sheltered life, is now confined in what is essentially a jail or prison with youthful criminals and drug offenders. The facts of such confinement are that a 13 year old boy, newly admitted, will be the target of perverted sexual attacks, and

that he is in real danger of rape or homosexual advances from the older, stronger boys. The child is in fear of these real threats of violence.

The child now lives in constant, and reasonable fear and threats of imminent violence and imminent threats of physical injury and assault, including sexual abuse.

/s/ Marcus D. Sherfey
Marcus D. Sherfey
Petitioner

/s/ Peggy Davis
Peggy Davis
Affirming Officer, Witness

I hereby certify the foregoing to be a true copy as filed in the office of the Monroe County Circuit Clerk.
Witness my hand and seal this 16 day of July, 1999.
JOYCE EMBERTON, Clerk
Monroe Circuit/District Courts

APPENDIX J

AOC-275.3 Doc. Code: ODV
Rev. 1-99
Page 1 of 2

Commonwealth of Kentucky
Court of Justice
KRS 403

Case No. 99-D-00048-001
Court: District
County: Monroe

DOMESTIC VIOLENCE ORDER

Marcus D. Sherfey,
Petitioner, Petitioner's DOB: 11/5/33

v.

Mark Anthony Sherfey, Sr.,
Respondent. Respondent's DOB: 10/28/57
SSN: 407-92-1346
4355 Hanging Limb Highway Sex: M Race: W
Monterey, TN 38574

The Court having jurisdiction over the parties and matter and Kentucky law having provided respondent notice and opportunity to be heard, and the Court, having heard the evidence and being sufficiently advised, **FINDS**:

For the Petitioner against the above named Respondent in that it was established, by a preponderance of the evidence, that an act(s) of domestic violence or abuse has occurred and may again occur.

IT IS HEREBY ORDERED:

That the above named Respondent is restrained from any contact or communication with the above named Petitioner;

> that Respondent shall remain at all times and places at least 500 feet away from Petitioner and members of Petitioner's family or household;
> except as follows: Court Appearances.

That the above named Respondent be restrained from committing further acts of domestic violence or abuse.

In accordance with the criteria of KRS 403.270, 403.320, 403.420, the Uniform Child Custody Jurisdiction Act and 28 U.S.C.A. § 1738A temporary custody of Tony Sherfey be awarded to Marcus D. Sherfey and Naomi Sherfey);

In order to assist in eliminating future acts of domestic violence and abuse; Respondent may have visitation with child Tony Sherfey every Sat. afternoon from 10:00 AM - 6:00 PM. Child to be picked up and delivered to Shelia

Emberton, resident. Child may not be taken from Monroe County, Ky.

The terms of this order shall be effective until July 22, 2002, not to exceed three years from date of issue pursuant to KRS 403.750(2). The Petitioner may return to the court which issued this order before expiration of this order to request that it be reissued for an additional period not to exceed three years.

Respondent is required to surrender respondent's Kentucky licence to carry concealed firearms or other deadly weapons to the court.

Violation of this order shall constitute contempt of this Court and may result in criminal charges. Any peace officer shall arrest the Respondent without a warrant upon probable cause that a violation of this order has occurred. Pursuant to 10 U.S.C. § 2265, this order may be enforced by the courts of any other state, the District of Columbia, and US Territory, and Tribal Lands. Pursuant to 10 U.S.C. § 2262, violation of this order in a state which has given full faith and credit to this order may result in federal penalties of fine and imprisonment. Pursuant to 18 U.S.C., § 922(g), it is a federal violation to purchase, receive, or possess a firearm while subject to this order.

7/28/99
Date

/s/ Steve D. Hunt
Judge

ENTERED
JUL 30, 1999

Joyce Emberton,
Monroe Circuit/
District Courts

APPENDIX K

Commonwealth of Kentucky
Court of Justice
Case No. 98-J-00057

JUVENILE PETITION

In the interest of TARA LYNN SHERFEY, a child:
The affiant, MARCUS SHERFEY, says that on July 31, 1998, in Monroe County, Kentucky, the above named juvenile:

Is abused, pursuant to KRS_____ and within the scope of KRS 610.010(1)(e);

Affiant's grounds of belief are: the above child is emotionally abused, based on the fact that said child is in a persistent argument with her mother and father (Marcus, Sr. and Laurie Sherfey) over the issues of the child attending public schools. The mother and father argue constantly over the child attending public schools. The father has been violent in front of the child attending public schools and with the child's mother over these issues. The mother of said child threatened suicide last week. Parents left Monroe Co. On 7/31/98, with said child in a van, travelling at a high rate of speed. Said child begged to stay with affiant.

Said juvenile, born 6/13/87, resides at Emperton St., Tompkinsville, KY, telephone 487-6410.

The juvenile's:

mother is: LAURIE SHERFEY
residence: 601 Emberton, Tompkinsville, KY

father is: MARK SHERFEY, SR.
residence: 601 Emberton, Thompkinsville, KY

Name and residence of the person allegedly responsible for the abuse: MARK SHERFEY, SR.

The affiant states that the foregoing allegations are true on information and belief.

/s/Marcus Sherfey
Signature/Address/Telephone of Affiant

Sworn to me this 1st day of August, 1998.

FILED
AUG 03, 1998

Joyce Emberton,
Monroe Circuit/
District Courts

ATTACHED HANDWRITTEN
PAGE TO APPENDIX K

Mark Sherfey, Sr. Left Tony (age 12) on 7/31/98 and drove at a high rate of speed with 4 other children and the mother of the child, across the TN line.

The mother had registered 4 of the 5 children on 7/31/98. The father became very upset and left with Laurie (mother of children) and the other 4 children.

The Affiant does not know if the Defendant forced Laurie to go - or if she went willingly.

The Affiant is concerned about the emotional abuse on Tara and Tony Sherfey.

The Defendant is somewhere in TNas far as the Affiant knows. The Affiant has no address or phone number for Mark and Laurie Sherfey.

Judy graves, Social Worker, has interviewed Affiant and Tony (child) regarding this petition on 8/1/98 at 9:15 P.M.

Mother threatened suicide last week.

APPENDIX L

AOC-JV-22
Rev. 12-89

Commonwealth of Kentucky
Court of Justice
KRS 620.060

Court: Juvenile
County: Monroe

JUVENILE EMERGENCY CUSTODY ORDER

In the interest of: TONY (MARK ANTHONY SHERFEY, JR.), a child.

Whereas, MARCUS SHERFEY, having testified by affidavit or sworn testimony that the following facts are true: That said child is dependent, neglected, and physically abused. Said child has been in affiant's home most of the summer, due to the emotional abuse within the home. Child states he has a scar resulting from a whipping and is afraid to go home with father.

It appears to the court that there are reasonable grounds to believe that the child is in danger of imminent death or serious physical injury or is being sexually abused and that the parents or other person exercising custodial control or supervison are unable or unwilling to protect the child.

(Name and Address)	(Relationship)
Marcus Sherfey, 108 Castle Heights Tompkinsville, KY 42167	Grandfather

It is hereby ordered that the child be placed in the physical care and custody of: Marcus and Naomi Sherfey, Grandparents, 108 Castle Heights, Tompkinsville, KY, pending a hearing on this matter to be hild within seventy-two (72) hours, exclusive of weekends and holidays, of the issuance of this order.

Said hearing will he held on: Tuesday, August 4, 1998 at 1:00 P.M. at the following location: Monroe District Court, Juvenile.

If necessary, any peace officer is authorized to take immediate custody of the child to insure compliance with this order.

Date: 8-1-98

ENTERED
AUG 01, 1998

Joyce Emberton,
Monroe Circuit/
District Courts